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### CPLR 214(3): Equitable Estoppel v. Statute of Limitations in Conversion

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## ARTICLE 2 — LIMITATIONS OF TIME

CPLR 214(3): *Equitable estoppel v. statute of limitations in conversion.*

In *General Stencils, Inc. v. Chiappa*,<sup>1</sup> plaintiff sued to recover a sum of money alleged to have been converted out of petty cash funds by defendant, its head bookkeeper. Defendant interposed the three-year statute of limitations as an affirmative defense. The plaintiff contended that this defense was barred by reason of the doctrine of equitable estoppel. Reversing the appellate division, the Court of Appeals upheld this contention and held that the plaintiff was entitled to litigate the issue of equitable estoppel.<sup>2</sup> The Court relied upon the maxim that no man may take advantage of his own wrong<sup>3</sup> and upon Section 17-103(4)(b) of the General Obligations Law which allows the court to preclude the defense of statute of limitations if its use would be inequitable. However, the Court noted that, at trial, the defendant could prevent the plaintiff from successfully pleading estoppel by showing that the plaintiff's own negligence and acquiescence caused the delay in discovering the conversion.

Prior cases have refused to allow defendants to interpose the statute of limitations where it would be inequitable to do so.<sup>4</sup> These cases presented either some affirmative misrepresentation by the defendant which induced plaintiff to refrain from bringing an action, or some conduct which fraudulently concealed the cause of action from plaintiff's knowledge.<sup>5</sup>

*General Stencils* appears to be the first case in which equitable estoppel was employed to defeat the statute of limitations in an action for conversion. It would seem that this holding will provide a wide avenue for plaintiffs to side-step the defense of statute of

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<sup>1</sup> 18 N.Y.2d 125, 219 N.E.2d 169, 272 N.Y.S.2d 337 (1966).

<sup>2</sup> It should be noted that plaintiff did not contend that the statute had been tolled by the concealment or that it had not begun to run until discovery of the conversion. Instead, reliance was placed solely upon the doctrine of equitable estoppel. The probable reason for this reliance was that prior case law held that concealment neither affected the accrual of a cause of action for conversion nor tolled the statute of limitations. See *Guild v. Hopkins*, 271 App. Div. 234, 245, 63 N.Y.S.2d 522, 532 (1st Dep't 1946).

<sup>3</sup> *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232 (1959).

<sup>4</sup> See, e.g., *Erbe v. Lincoln Rochester Trust Co.*, 13 App. Div. 2d 211, 214 N.Y.S.2d 849 (4th Dep't 1961) (breach of fiduciary duty of trustees); *Dodds v. McColgan*, 229 App. Div. 273, 241 N.Y. Supp. 584 (1st Dep't 1930) (action for services rendered); *Safrin v. Friedman*, 27 Misc. 2d 687, 96 N.Y.S.2d 627 (Sup. Ct. Kings County), *aff'd*, 277 App. Div. 1138, 101 N.Y.S.2d 216 (2d Dep't 1950) (action for wages due). *But see*, *Scheuer v. Scheuer*, 308 N.Y. 447, 126 N.E.2d 555 (1955) wherein equitable estoppel was held not to apply in an action to impress a constructive trust.

<sup>5</sup> 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 201.13 (1965).

limitations in conversion actions, since in many such actions there is necessarily present an affirmative act of concealment on the defendant's part which would give rise to equitable estoppel. It must be pointed out, however, that the plaintiff must not be guilty of negligence in failing to discover his cause of action, since this will vitiate the plea of equitable estoppel.

ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE  
OF COURT

*CPLR 302(a)(1): May be applicable to non-commercial transactions of business.*

There seems to be a conflict as to whether CPLR 302(a)(1) is applicable to non-commercial as well as to commercial transactions of business. In *Willis v. Willis*,<sup>6</sup> the supreme court, New York County, held that a separation agreement entered into in New York was not a "transaction of business" within the meaning of CPLR 302(a)(1). The court said that this section encompassed only "commercial" transactions.<sup>7</sup>

However, the supreme court, Nassau County, in *Todd v. Todd*,<sup>8</sup> while holding service under CPLR 308 invalid, nevertheless noted that there "may well be a basis for maintaining the action in New York, for the separation agreement was apparently entered into in New York. . . ."<sup>9</sup>

To resolve this conflict, a clarification by the Court of Appeals is needed. In view of the recent amendment to CPLR 302(a)(3) expanding jurisdiction in the area of tortious activity, it would appear that the legislature intended CPLR 302 to approach the constitutional limit. Therefore, it would seem most likely that the Court of Appeals will eventually construe "transaction of business" to include both commercial and non-commercial transactions. By so doing, the New York courts will be given as broad a jurisdiction as is possible under the present terms of CPLR 302(a)(1).

*CPLR 308(3): Court warns plaintiffs about "sewer service."*

In *Todd v. Todd*,<sup>10</sup> the supreme court has warned plaintiffs to exercise care in their choice of process servers. In that case, the court vacated substituted service and dismissed the complaint for lack of jurisdiction, since it was conclusively demonstrated that

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<sup>6</sup> 42 Misc. 2d 473, 248 N.Y.S.2d 260 (Sup. Ct. N.Y. County 1964).

<sup>7</sup> *Id.* at 475, 248 N.Y.S.2d at 262.

<sup>8</sup> 51 Misc. 2d 94, 272 N.Y.S.2d 455 (Sup. Ct. Nassau County 1966).

<sup>9</sup> *Id.* at 96, 272 N.Y.S.2d at 456.

<sup>10</sup> 51 Misc. 2d 94, 272 N.Y.S.2d 455 (Sup. Ct. Nassau County 1966).